UNITED STATES PATENT AND TRADEMARK OFFICE

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1   UNITED STATES PATENT AND TRADEMARK OFFICE

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3

4   BEFORE THE BOARD OF PATENT APPEALS

5   AND INTERFERENCES

6   _____

7

8   *Ex parte* LARRY A. GREENSPAN, STEVEN MICHAEL MALLOT, JON

9   DAVID FRIZZELL, DEBORAH LOUISE REED, and BRIAN HOWARD

10   _____

11

12   Appeal 2008-005442

13   Application 09/722,962

14   Technology Center 3600

15   _____

16

17   Decided: November 12, 2009

18   _____

19

20

21 Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and

22 BIBHU R. MOHANTY, *Administrative Patent Judges.*

23

24 FETTING, *Administrative Patent Judge.*

25

26

27   DECISION ON APPEAL

1   STATEMENT OF THE CASE

2   Larry A. Greenspan, Steven Michael Mallot, Jon David Frizzell,

3   Deborah Louise Reed, and Brian Howard (Appellants) seek review under

4   35 U.S.C. § 134 (2002) of a final rejection of claims 61-71, 73, 74, 76-87,

5   and 89-92, the only claims pending in the application on appeal.

6   We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)

7   (2002).

8   We REVERSE.

9   The Appellants invented a way of generating a graphical case

10 presentation of a course of treatment using a single mouse click to assemble

11 all necessary information for a diagnosed case from a healthcare

12 management application and consolidate the information into a concise and

13 presentable form for the patient (Specification 1:Second full ¶). Essentially

14 the invention is to a report generator that merges specific dental treatment

15 information into a general treatment template.

16   An understanding of the invention can be derived from a reading of

17 exemplary claim 61, which is reproduced below [bracketed matter and some

18 paragraphing added].

19   61. A method for generating and tracking presentations for a
20   dental patient describing a recommended course of dental
21   treatment comprising of at least one dental procedure, the
22   method comprising the steps of:
23   [1] providing and starting a presentation tool in a computer
24   having a display;
25   [2] providing at least one master template configured for
26   display as a dental presentation on said computer display;
27   wherein said master template:

1   (a) includes general information to be shown in every
2   presentation;
3   (b) designates a common theme or look for the
4   presentation;
5   (c) presents common information in a consistent manner
6   on every presentation;
7   (d) controls the order of the information in the
8   presentation; and
9   (e) reduces the possibility of errors in the information
10   presentation;
11   loading the dental presentation master template into the
12   presentation tool;
13   [3] providing the dental presentation master template with at
14   least one specific dental procedure indicator
15   for use as a point of incorporation for specific dental
16   information on the recommended course of treatment;
17   [4] inserting in each template at least one general information
18   indicator
19   for use as a point of incorporation for general information
20   on the dental patient;
21   [5] incorporating specific dental information about the specific
22   dental procedure from the recommended course of treatment for
23   the dental patient into the template,
24   wherein incorporating specific dental information
25   comprises the steps of
26   i. scanning the template for a marker, wherein the
27   marker identifies dental information specific to the
28   dental patient and the marker identifies an
29   insertion point in the template;
30   ii. retrieving dental information specific to the
31   dental patient identified by the marker from the
32   dental desktop application;
33   iii. inserting the retrieved dental information
34   specific to the dental patient into the template a the
35   insertion point identified by the marker; and
36   iv. repeating the steps of scanning, retrieving and
37   inserting for each marker in the template;

1   [6] incorporating the general information on the dental patient

2   into at least one template;

3   [7] generating a dental presentation using at least one template

4   with the incorporated specific dental information and the

5   general information on the dental patient with one step,

6   wherein the dental presentation is generated utilizing the

7   computer;

8   [8] storing the dental presentation in a dental desktop

9   application on the computer;

10   [9] presenting the dental presentation to the dental patient

11   without presenting a graphic simulation of the treatment

12   of the patient; and

13   [10] updating records of the individual in the dental desktop

14   application

15   to correspond to the indicated at least one dental

16   procedure accepted by the individual in the presentation

17   tool.

18

19   This appeal arises from the Examiner's Final Rejection, mailed May

20   4, 2006. The Appellants filed an Appeal Brief in support of the appeal on

21   February 1, 2007. An Examiner's Answer to the Appeal Brief was mailed

22   on July 5, 2007.

23

24   PRIOR ART

25   The Examiner relies upon the following prior art:

26   Clark   US 6,171,112 B1   Jan. 9, 2001

27   Sachdeva   US 6,587,828 B1   Jul. 1, 2003

28

29   Roger C. Parker, *Microsoft 4 for Windows for Dummies,* 161-200

30   (1994) (hereinafter "Parker").

31

1   REJECTIONS

2   Claims 61-71, 73-74, 76-87, and 89-92 stand rejected under 35 U.S.C.

3   § 112, first paragraph, as lacking a supporting written description within the

4   original disclosure.

5   Claims 61-63, 66-71, and 73-74 stand rejected under 35 U.S.C. §

6   103(a) as unpatentable over Sachdeva, Clark, and Admitted Prior Art.

7   Claims 64 and 65 stand rejected under 35 U.S.C. § 103(a) as

8   unpatentable over Sachdeva, Clark, Admitted Prior Art, and Parker.

9   Claims 76-87 and 89-92 stand rejected under 35 U.S.C. § 103(a) as

10   unpatentable over Sachdeva, Parker, and Admitted Prior Art.

11

12   ISSUES

13   The issues pertinent to this appeal are

14   • Whether the Appellants have sustained their burden of showing that

15   the Examiner erred in rejecting claims 61-71, 73-74, 76-87, and 89-92

16   under 35 U.S.C. § 112, first paragraph, as lacking a supporting written

17   description within the original disclosure.

18   • Whether the Appellants have sustained their burden of showing that

19   the Examiner erred in rejecting claims 61-63, 66-71, and 73-74 under

20   35 U.S.C. § 103(a) as unpatentable over Sachdeva, Clark, and

21   Admitted Prior Art.

22   • Whether the Appellants have sustained their burden of showing that

23   the Examiner erred in rejecting claims 64 and 65 under 35 U.S.C. §

24   103(a) as unpatentable over Sachdeva, Clark, Admitted Prior Art, and

25   Parker.

1   •   Whether the Appellants have sustained their burden of showing that

2   the Examiner erred in rejecting claims 76-87 and 89-92 under 35

3   U.S.C. § 103(a) as unpatentable over Sachdeva, Parker, and Admitted

4   Prior Art.

5   The pertinent issue turns on whether Sachdeva describes a template as

6 in limitation [2] of claim 61.

7

8   FACTS PERTINENT TO THE ISSUES

9   The following enumerated Findings of Fact (FF) are believed to be

10 supported by a preponderance of the evidence.

11   *Facts Related to Claim Construction*

12   01.   The disclosure contains no lexicographic definition of

13   "template."

14   02.   The ordinary and customary meaning of "template" within a

15   computer context is a document or file having a preset format,

16   used as a starting point for a particular application so that the

17   format does not have to be recreated each time it is used.[1]

18   *Sachdeva*

19   03.   Sachdeva is directed to automation of orthodontics treatment

20   plan generation (Sachdeva 3:13-17).

21   04.   Sachdeva describes processing that begins by providing a list of

22   health care services to a patient and/or care provider. The

23   processing continues by prompting for input of digital information

24   regarding the patient when a health care service has been selected.

---

[1] *American Heritage Dictionary of the English Language* (4th ed. 2000).

1   The processing continues by determining whether a sufficient

2   amount of digital information has been received. If so, the

3   processing continues by simulating treatment of a patient based on

4   the digital information, a treatment objective, and normalized

5   patient data. The processing then continues by generating the

6   patient treatment plan in accordance with the simulating of the

7   treatment when the simulated treatment results have been

8   acknowledged. With such a method and apparatus, the generation

9   of a patient treatment plan may be automated for particular types

10 of health care services, including orthodontic care, dental care,

11 and medical care (Sachdeva 3:37-54).

12 05.   Sachdeva's device receives information that may include one or

13   more of: the patient's chief complaint, the patient's medical

14   history, the patient's dental history, clinical examination, three-

15   dimensional images of the patient's orthodontic structure, video

16   graphic examination, functional examination information, soft

17   tissue evaluation, skeletal evaluation, and patient's objectives

18   (Sachdeva 4:12-17).

19 06.   To facilitate the generation of its treatment plan, Sachdeva's

20   treatment plan device may interface with a medical resource, a

21   dental resource, an orthodontic resource, an insurance company,

22   and other resources. Based on input from one or more of these

23   sources and the inputs provided by the patient and local care

24   provider, the treatment plan device generates the treatment plan.

25   The treatment plan will include results, based on appearance,

26   function, costs of treatment, time for treatment, staging of

7

1   treatment events, evaluation periods, scheduling, and associated

2   risks (Sachdeva 4:49-60).

3   07.   Sachdeva's Fig. 2 illustrates a logic diagram for generating a

4   patient treatment plan for a patient and may be implemented as

5   operational instructions for execution. The process begins with a

6   list of health care services on a graphical user interface. Once the

7   health care service has been selected, a prompt requests the user to

8   input digital information of an orthodontic patient such as a digital

9   model of the patient's malocclusion, patient's chief compliant,

10   patient's demands, financial constraints, treatment length, desired

11   orthodontic function, desired orthodontic appearance, the patient's

12   dental history, and the patient's medical history. Next a treatment

13   objective that may include dental appearance, orthodontic

14   function, facial appearance, skeletal appearance and/or function,

15   treatment time, patient's commitment to treatment, and costs. The

16   process then proceeds to where treatment of the patient is

17   simulated based on the received digital information, the treatment

18   objective, and normalized patient data (Sachdeva 5:11 – 6:15).

19   *Parker*

20   08.   Parker is directed to explaining Microsoft Office (Parker:Title).

21   09.   Each layout alternative is based on an underlying design or

22   template, called a Slide Master. That contains background text

23   and graphics that appear in each slide (Parker 192:Editing the

24   Slide Master).

25   10.   PowerPoint presentations are saved in files (Parker 174:Saving

26   your work as a PowerPoint file).

1   *Clark*

2   11.   Clark is directed to a Virtual Interactive Teaching and Learning

3   (VITAL) Center that provides an interactive patient education and

4   informed consent process that reduces patient anxiety, increases

5   patient comprehension and improves the level of personal

6   interaction between patient and physician (Clark 3:58-62).

7   *Facts Related To Differences Between The Claimed Subject Matter And*

8   *The Prior Art*

9   12.   Sachdeva does not refer to or otherwise describe a master

10   template.

11 *Facts Related To The Level Of Skill In The Art*

12   13.   Neither the Examiner nor the Appellants has addressed the level

13   of ordinary skill in the pertinent arts of systems analysis and

14   programming, graphical user interfaces, dental systems, document

15   presentation systems, and user interface design. We will therefore

16   consider the cited prior art as representative of the level of

17   ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350,

18   1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the

19   level of skill in the art does not give rise to reversible error 'where

20   the prior art itself reflects an appropriate level and a need for

21   testimony is not shown'") (quoting *Litton Indus. Prods., Inc. v.*

22   *Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

23 *Facts Related To Secondary Considerations*

24   14.   There is no evidence on record of secondary considerations of

25   non-obviousness for our consideration.

1   PRINCIPLES OF LAW

2   *Claim Construction*

3   During examination of a patent application, pending claims are given

4   their broadest reasonable construction consistent with the specification. *In*

5   *re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci.*

6   *Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

7   Limitations appearing in the specification but not recited in the claim

8   are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d

9   1364, 1369 (Fed. Cir. 2003) (claims must be interpreted "in view of the

10   specification" without importing limitations from the specification into the

11   claims unnecessarily).

12   Although a patent applicant is entitled to be his or her own

13   lexicographer of patent claim terms, in *ex parte* prosecution it must be

14   within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant

15   must do so by placing such definitions in the specification with sufficient

16   clarity to provide a person of ordinary skill in the art with clear and precise

17   notice of the meaning that is to be construed. *See also In re Paulsen*, 30

18   F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the

19   specific terms used to describe the invention, this must be done with

20   reasonable clarity, deliberateness, and precision; where an inventor chooses

21   to give terms uncommon meanings, the inventor must set out any

22   uncommon definition in some manner within the patent disclosure so as to

23   give one of ordinary skill in the art notice of the change).

1   *Written Description*

2   The first paragraph of 35 U.S.C. § 112 requires that the specification

3   shall contain a written description of the invention. This requirement is

4   separate and distinct from the enablement requirement. *See, e.g., Vas-Cath,*

5   *Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991).

6   The "written description" requirement implements the principle
7   that a patent must describe the technology that is sought to be
8   patented; the requirement serves both to satisfy the inventor's
9   obligation to disclose the technologic knowledge upon which
10   the patent is based, and to demonstrate that the patentee was in
11   possession of the invention that is claimed.
12
13   *Capon v. Eshhar*, 418 F.3d 1349, 1357 (Fed. Cir. 2005).

14   One shows that one is "in possession" of *the invention* by
15   describing *the invention,* with all its claimed limitations, not
16   that which makes it obvious. *Id.* ("[T]he applicant must also
17   convey to those skilled in the art that, as of the filing date
18   sought, he or she was in possession *of the invention.* The
19   invention is, for purposes of the 'written description' inquiry,
20   *whatever is now claimed.*") (emphasis in original). One does
21   that by such descriptive means as words, structures, figures,
22   diagrams, formulas, etc., that fully set forth the claimed
23   invention. Although the exact terms need not be used *in haec*
24   *verba, see Eiselstein v. Frank,* 52 F.3d 1035, 1038 . . . (Fed.
25   Cir. 1995) ("[T]he prior application need not describe the
26   claimed subject matter in exactly the same terms as used in the
27   claims . . . ."), the specification must contain an equivalent
28   description of the claimed subject matter.
29
30   *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

31   *Obviousness*

32   A claimed invention is unpatentable if the differences between it and

33   the prior art are "such that the subject matter as a whole would have been

1   obvious at the time the invention was made to a person having ordinary skill

2   in the art." 35 U.S.C. § 103(a) (2000); *KSR Int'l Co. v. Teleflex Inc.*, 550

3   U.S. 398, 399 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

4   In *Graham*, the Court held that the obviousness analysis is bottomed

5   on several basic factual inquiries: "[(1)] the scope and content of the prior art

6   are to be determined; [(2)] differences between the prior art and the claims at

7   issue are to be ascertained; and [(3)] the level of ordinary skill in the

8   pertinent art resolved." 383 U.S. at 17. *See also KSR*, 550 U.S. at 406.

9   "The combination of familiar elements according to known methods is likely

10   to be obvious when it does no more than yield predictable results." *Id*. at

11   416.

12   "When a work is available in one field of endeavor, design incentives

13   and other market forces can prompt variations of it, either in the same field

14   or a different one. If a person of ordinary skill can implement a predictable

15   variation, § 103 likely bars its patentability." *Id*. at 417.

16   "For the same reason, if a technique has been used to improve one

17   device, and a person of ordinary skill in the art would recognize that it would

18   improve similar devices in the same way, using the technique is obvious

19   unless its actual application is beyond his or her skill." *Id.*

20   "Under the correct analysis, any need or problem known in the field

21   of endeavor at the time of invention and addressed by the patent can provide

22   a reason for combining the elements in the manner claimed." *Id.* at 420.

23

1   ANALYSIS

2 *Claims 61-71, 73-74, 76-87, and 89-92 rejected under 35 U.S.C. § 112, first*

3   *paragraph, as lacking a supporting written description within the original*

4   *disclosure.*

5   The Appellants argue the independent claims 61 and 76. Accordingly,

6 we select claims 61 and 76 as representative. 37 C.F.R. § 41.37(c)(1)(vii)

7 (2007).

8   The Examiner found that the Appellants introduced new matter

9 because the original Specification used the term healthcare which was

10 subsequently changed to dental. In particular, the Examiner found that the

11 originally filed Specification did not contain support for limitations [4] and

12 [5] of claim 61 or the equivalent to claim 61's limitation [5] in claim 76

13 (Answer 3-4).

14   The Appellants contend that they specifically enumerated dental

15 procedures as a subset of healthcare in Specification pages 1-2 and that

16 many of the drawings show the claimed subject matter using dental

17 examples (Appeal Br. 6-7) and the Appellants show where the Specification

18 supports the above claim limitations at Appeal Brief pages 2-4.

19   We agree with the Appellants. The original Specification supports

20 limitations [4] and [5] of claim 61 as applied to healthcare at Specification 8-

21 10. In particular, the Specification pages 8-9 describes inserting a procedure

22 information page that generally describes the procedures for the patient,

23 supporting limitation [4], and Specification pages 9-10 describes scanning to

24 insert procedure details using marker codes supporting limitation [5].

25 Although these portions refer generically to healthcare procedures, we find

26 that Figure 3 explicitly portrays such a presentation to dental procedures.

1 Thus we find the Appellants show possession of the claimed subject matter

2 at the date of filing.

3   The Appellants have sustained their burden of showing that the

4 Examiner erred in rejecting claims 61-71, 73-74, 76-87, and 89-92 under 35

5 U.S.C. § 112, first paragraph, as lacking a supporting written description

6 within the original disclosure.

7 *Claims 61-63, 66-71, and 73-74 rejected under 35 U.S.C. § 103(a) as*

8 *unpatentable over Sachdeva, Clark, and Admitted Prior Art.*

9   The Appellants argue these claims as a group.

10   Accordingly, we select claim 61 as representative of the group.

11 37 C.F.R. § 41.37(c)(1)(vii) (2007).

12   The Examiner found that Sachdeva described most of the limitations,

13 but did not describe the scanning, or recording of date and time. The

14 Examiner found that Clark described the recording of date and time and took

15 administrative notice of the notoriety of using markers such as link tags in

16 HTML documents to scan and import data (Answer 7-10).

17   The Appellants contend that Sachdeva does not show the claimed

18 template, markers, or one click updating to insert specific dental information

19 at the markers (Appeal Br. 8-9).

20   We agree with the Appellants. The Examiner found that Sachdeva

21 described a master template in Figure 1, reference numbers 18-20. We must

22 first construe the term "template" to determine whether this finding is in

23 error. The Specification does not define the term "template" but its usual

24 and customary meaning within a computer context is a document or file

25 having a preset format, used as a starting point for a particular application so

1   that the format does not have to be recreated each time it is used (FF 01 &

2   02).

3   Sachdeva Figure 1 shows an image of a screen shot. Reference

4   numbers 18-20 are graphic and textual content within the screen shot. There

5   is no description of this screen shot as a document or file. Indeed there is no

6   description of how the screen is assembled or whether such assembly is

7   stored as anything resembling a template.

8   The Examiner points to Sachdeva column 4, lines 11-60 to support

9   such a template (Answer 21:¶ (B))[2]. This portion of Sachdeva describes

10   how the "treatment plan device" collects information. Apparently the

11   Examiner found the entire computer in Sachdeva to be the master template.

12   However, a computer is neither a document nor a file. The cited portion also

13   describes the individual contents of the screen as being stored in firmware,

14   but does not describe any file or document that collects those contents into

15   an organized structure that might be construed as a template. Thus we agree

16   that the Examiner was in error in finding that Sachdeva described a master

17   template (FF 12).

18   The Examiner further found that the scanning limitations of claim 61

19   were old and well known. The Examiner took administrative notice of the

20   notoriety of HTML documents that scan for documents matching hyperlinks.

21   The Examiner also found that there were no one step limitations in claim 61

22   (Answer 21-22:¶'s (C) and (D)).

---

[2] The Examiner also found that the Appellants argued that none of Sachdeva, Clark, or Parker described the template. The rejection of claim 61 to which the Examiner responded was over Sachdeva, Clark, and admitted prior art. Parker was not applied in the rejection of claim 61.

1   As to the one step limitation, this is in limitation [7]. The Examiner

2   made no finding as to how any art described this limitation. Thus we agree

3   the Examiner failed to establish a prima facie case.

4   As to the notoriety of HTML, as the Appellant argued, this is

5   inapposite to limitation [5] which scans for information for a specific

6   patient. The patient changes from presentation to presentation. The

7   conventional links in an HTML document the Examiner refers to scan for a

8   document meeting the identifier in the link, which would not change

9   between patients. Accordingly, the conventional links in an HTML

10   document would not identify dental information specific to the dental patient

11   The remaining claims depend from claim 61 and incorporate the

12   limitations of claim 61. The Appellants have sustained their burden of

13   showing that the Examiner erred in rejecting claims 61-63, 66-71, and 73-74

14   under 35 U.S.C. § 103(a) as unpatentable over Sachdeva, Clark, and

15   Admitted Prior Art.

16   *Claims 64 and 65 rejected under 35 U.S.C. § 103(a) as unpatentable over*

17   *Sachdeva, Clark, Admitted Prior Art, and Parker.*

18   The Examiner did not rely on Parker to describe any of the limitations

19   for which the findings in the rejection of claim 61 were in error. The

20   Appellants have accordingly sustained their burden of showing that the

21   Examiner erred in rejecting claims 64 and 65 under 35 U.S.C. § 103(a) as

22   unpatentable over Sachdeva, Clark, Admitted Prior Art, and Parker, for the

23   same reasons as against the rejection of claim 61.

24   *Claims 76-87 and 89-92 rejected under 35 U.S.C. § 103(a) as unpatentable*

25   *over Sachdeva, Parker, and Admitted Prior Art.*

1   This rejection includes the only other independent claim, claim 76,

2   which is drafted towards a system that performs the procedure recited in

3   claim 61. Thus claim 76 includes the limitations from claim 61 for which

4   the Examiner's findings were in error. The Examiner did not rely on Parker

5   to describe any of the limitations for which the findings in the rejection of

6   claim 61 were in error. The Appellants have accordingly sustained their

7   burden of showing that the Examiner erred in rejecting claims 76-87 and 89-

8   92 under 35 U.S.C. § 103(a) as unpatentable over Sachdeva, Parker, and

9   Admitted Prior Art, for the same reasons as against the rejection of claim 61.

10

11   CONCLUSIONS OF LAW

12   The Appellants have sustained their burden of showing that the

13   Examiner erred in rejecting claims 61-71, 73-74, 76-87, and 89-92 under

14   35 U.S.C. § 103(a) as unpatentable over the prior art.

15

16   DECISION

17   To summarize, our decision is as follows:

18   • The rejection of claims 61-71, 73-74, 76-87, and 89-92 under 35

19   U.S.C. § 112, first paragraph, as lacking a supporting written

20   description within the original disclosure is not sustained.

21   • The rejection of claims 61-63, 66-71, and 73-74 under 35 U.S.C. §

22   103(a) as unpatentable over Sachdeva, Clark, and Admitted Prior Art

23   is not sustained.

24   • The rejection of claims 64 and 65 under 35 U.S.C. § 103(a) as

25   unpatentable over Sachdeva, Clark, Admitted Prior Art, and Parker is

26   not sustained.

17

- The rejection of claims 76-87 and 89-92 under 35 U.S.C. § 103(a) as unpatentable over Sachdeva, Parker, and Admitted Prior Art is not sustained.

<u>REVERSED</u>

hh

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